

DANFMTBC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re: METHYL TERTIARY BUTYL
ETHER ("MTBE") PRODUCTS
LIABILITY LITIGATION

00 MDL 1358 (SAS)

00 CV 1898 (SAS)

Telephone Conference

-----x

New York, N.Y.
October 23, 2013
2:30 p.m.

Before:

HON. SHIRA A. SCHEINDLIN

District Judge

APPEARANCES

MILLER AXLINE & SAWYER
Attorneys for Plaintiffs
BY: TRACEY L. O'REILLY

JACKSON, GILMOUR & DOBBS
Attorneys for Plaintiffs
BY: JOHN D.S. GILMOUR
NATHAN SHORT

McDERMOTT WILL & EMERY LLP
Attorneys for ExxonMobil
BY: STEPHEN J. RICCARDULLI

SEPULVADO & MALDONADO, PSC
Attorneys for Total Petroleum Puerto Rico
BY: ELAINE M. MALDONADO-MATIAS

DANFMTBC

1 KING & SPALDING
Attorneys for Chevron USA
2 BY: CHARLES CORRELL, JR.

3 SEDGWICK LAW
Attorneys for Shell Oil Company
4 BY: PETER CONDRON

5 EIMER STAHL
Attorneys for CITGO Petroleum
6 BY: LISA MEYER

7 BEVERIDGE & DIAMOND
Attorneys for Sunoco, Inc.
8 BY: DANIEL M. KRAININ

9 McCONNELL VALDES LLC
Attorneys for Sol Puerto Rico Limited
10 BY: JUAN A. MARQUES-DIAS

11 JAMES B. HARRIS
Attorney for Petrobas America

12 BLANK ROME LLP
Attorney for Lyondell Chemical Corporation
13 BY: JEFFREY S. MOLLER

14 BAKER BOTTS LLC
Attorneys for Hess Oil Virgin Islands
Corporation, Hovensa LLC, and Hovic
15 BY: CHRIS DANLEY

16
17 FULBRIGHT & JAWORSKI LLP
Attorneys for Chevron Phillips Puerto Rico Core
18 and ConocoPhillips
19 BY: STEPHEN C. DILLARD
20
21
22
23
24
25

DANFMTBC

(In chambers; via speakerphone)

THE COURT: All right. So we left off yesterday, you won't know where, but in my notes I was up to Petrobras America and on that one I was told that there are meet and confers going on and I needn't do anything. Is that still the case today?

MR. HARRIS: Yes, and some of the Court's earlier rulings have clarified some conversations I'm having with plaintiff's counsel and we're scheduled to meet in Houston on October 31 hopefully to resolve the remaining issues. I understand if we can we'll get something in front of the special master immediately.

THE COURT: Okay, we will see. Okay, so my next topic is Shell. This will be Mr. Condrón, but I have a few topics here. The first topic is Shell says Equilon was never involved with gasoline supplied to Puerto Rico. I don't know if the plaintiff accepts that statement or contests it. Ms. O'Reilly?

MS. O'REILLY: Your Honor, this is Ms. O'Reilly. Yes. We have not had an opportunity to prove the veracity of that statement. We're about to take depositions of Shell. I will tell you that in their designation of covered groups in this case covered Equilon and Motiva, identified them as a company that controls the distribution of product and that they are based in Houston. When I took the deposition recently of Mr. Cintron who worked for the Puerto Rico based Shell entity he

DANFMTBC

1 said that he called Houston, he identified it specifically,
2 every two weeks to let them know whose products he was
3 purchasing, let them know its inventory. So obviously we
4 should have the right to explore this and challenge the
5 veracity of these comments.

6 THE COURT: Mr. Condron, do you want to be heard any
7 further on this? I'm not really sure what you expected me to
8 be able to do but in the letters it says Equilon was never
9 involved with gasoline supplied Puerto Rico. Ms. O'Reilly says
10 there is some evidence they were and she should be allowed to
11 test it. Do you want me to do anything on that or move on?

12 MR. CONDRON: Peter Condron. We're trying to
13 negotiate a declaration with plaintiffs that has sort of
14 stopped and I think at this point it may be easier just to put
15 up a witness on it.

16 THE COURT: Good. The next one is issue 26 where the
17 plaintiffs are seeking a statement of Shell's efforts in
18 response to plaintiff's discovery requests and Shell objects
19 and says what's the problem and it calls for work product. So,
20 Ms. O'Reilly, I really am kind of against that kind of
21 discovery on discovery, so to speak. Why should Shell have to
22 tell you the efforts they took to respond?

23 MS. O'REILLY: Your Honor, we are not going to pursue
24 number 26.

25 THE COURT: Okay.

DANFMTBC

1 MS. O'REILLY: I can help you out here. Ms. O'Reilly,
2 for the court reporter. 26 we'll negotiate a declaration on
3 the rest of the issues. So we don't need to go forward with
4 those.

5 THE COURT: Right, because the other issue was
6 authentication which was 28. We discussed that yesterday. And
7 the final issue was 30, which sought more information about
8 authenticity and we kind of discussed that yesterday. So I am
9 ready to turn to my next one which was called, for Shell
10 actually I called it Shell chemical, Shell trading, Shell
11 western, Shell international. They have some objections.
12 Again, the first one was the efforts to respond so I guess your
13 response, again, Ms. O'Reilly, is the same?

14 MS. O'REILLY: Yes, that's correct.

15 THE COURT: And then issues 28 to 30 involved the
16 piercing of the corporate veil argument which we discussed
17 yesterday and issue 32 was authentication of all documents. So
18 I think 26, 28 through 30 and 32 have already been discussed.

19 That takes us to document request 33 and 34. In
20 document request 33 the defendant sought an index matching
21 produced documents to the interrogatories they respond to. Are
22 you still pressing that?

23 MS. O'REILLY: Your Honor, we can work this out with
24 defendants. One of the issues that we've encountered in this
25 case is defendants referring generally to their MDL production,

DANFMTBC

1 CR production on this date but not identifying --

2 THE COURT: Right. I was going to give guidance on
3 this one and say that you're right and people have to identify
4 the documents as they correspond to the interrogatories they
5 respond to. So if that little comment helps your meet and
6 confer, so be it. That generally is the right way to do it.
7 Then you also had a request with respect to document request 34
8 you wanted a business record affidavit for all documents
9 produced. I'm not sure --

10 MS. O'REILLY: We can work out the same deal we worked
11 out with Exxon yesterday under your guidance.

12 THE COURT: All right. Then that takes me to the
13 second 30(b)(6) notice on those same Shell companies. The
14 first notice I dealt with was July 9. Now I'm up to the
15 October 11 notice and there's a number of arguments here.
16 First is that Sol Puerto Rico, Limited as separate company
17 recommended by separate counsel and it should be included in
18 the 30(b)(6) directed to the Shell defendants on October 11,
19 and that seems right, Ms. O'Reilly.

20 MS. O'REILLY: It is correct, your Honor. We were
21 included inaccurately. The notice of October 11, your Honor,
22 is a very limited notice.

23 THE COURT: Look, I just need to get on. So it
24 doesn't apply to Sol because Sol is separate and that's that.
25 Number two, you object -- not you -- yes, you, the Shell

DANFMTBC

1 defendants say that the topics raised in this second notice are
2 duplicative of a previous notice. Is that not true,
3 Ms. O'Reilly?

4 MS. O'REILLY: Absolutely not your, Honor.

5 THE COURT: Why did they say so, Mr. Condrón? Have
6 you worked it out with Ms. O'Reilly why she says the October 11
7 notice is not duplicative?

8 MR. CONDRÓN: Your Honor, the point was we were going
9 to have one witness and one deposition. The plaintiffs were
10 expecting two depositions. There is some overlap. I think the
11 second notice is more specific than the first one. The
12 questions are more pointed, but the general categories included
13 in the first notice would I think subsume the more specific
14 questions being asked in the second. The point we were solely
15 making is one deposition.

16 THE COURT: From my point of view giving guidance,
17 Ms. O'Reilly, I don't want two depositions with duplicative
18 questions.

19 MS. O'REILLY: The focus of this was on manufacture of
20 gasoline that was not covered to the first one.

21 THE COURT: That's fine, but if one person can answer
22 the issues in both notices, that's best. I don't want you two
23 people that you will ask the same questions of because they
24 have to produce a second person because the first person has no
25 knowledge of a limited topic and you get a second for an hour

DANFMTBC

1 to clear up that limited topic, sobeit, but the hope is that
2 one person can do all of it.

3 MS. O'REILLY: Your Honor, we agree. We hope we can
4 solve it in one deposition.

5 THE COURT: Then the third objection before I get to
6 the issue numbers, Shell says that some of the issues are
7 untimely, that they're really, they're really document requests
8 in disguise that are untimely, not matters for testimony. Is
9 that something you're still pursuing, Mr. Condron?

10 MR. CONDRON: Yes, your Honor. We do object on those
11 grounds. To the extent we have documents and they were
12 responsive to earlier document requests we produced them. For
13 example, one of the topics is preshipment of MTBE to the
14 Yabucoa coal facility and the witness is supposed to provide
15 inventory and inventory reconciliation records. That's clearly
16 a document request, not a matter for testimony and that's why
17 we objected.

18 THE COURT: Right, but this has not been resolved?

19 MR. CONDRON: Correct.

20 MS. O'REILLY: Your Honor, we haven't even had an
21 opportunity to meet and confer over these issues and it is
22 something we will be meeting and conferring over with them on
23 it. Obviously we disagree with their interpretations.

24 THE COURT: It doesn't sound like much of an
25 interpretation. If you've asked for documents for the first

DANFMTBC

1 time that's a document request. And if the time for making
2 document requests is over, then it's over. There's no reason
3 to be asking for documents at this late stage which you could
4 have asked for before and the way Mr. Condrón made it sound in
5 that example that's strictly asking for documents that you
6 never asked for before. So I'll leave it to you to meet and
7 confer but you now have my thoughts on the topic of untimely
8 document requests.

9 Then issue 19. The plaintiffs seek a detailed
10 description of the last person who had custody and control over
11 the Shell defendants business records. Is that still an
12 objection?

13 MR. CONDRÓN: We have not had an opportunity to meet
14 and confer on these particular topics and it might be better
15 served to have us do that.

16 THE COURT: Because the next one was issue 2, which
17 sought all documents, facts and witnesses that support any
18 contention that Shell did not supply gasoline containing MTBE
19 to Puerto Rico. That does sound very broad. It may ask for
20 work product, but that said, if you need to get a declaration
21 from a person with knowledge that says that Shell never
22 supplied gasoline containing MTBE to Puerto Rico you should do
23 that.

24 MR. CONDRÓN: We expect the testimony at the
25 deposition would be directed towards this topic, but the way

DANFMTBC

1 that this is phrased it looks more like an interrogatory than a
2 question.

3 THE COURT: I agree. As long as you can substantiate
4 the statement with a sworn witness either in a declaration or a
5 deposition I'm satisfied.

6 Okay, then we have document request 1 through 8 and
7 your objection to document request 1 through 8, which I didn't
8 put in front of me, just the note that you have a problem, says
9 that the objection is that those requests are beyond the scope
10 of the September 30th CMO. Is that something you're going to
11 talk to each other about or do you want me to get involved in
12 now or what?

13 MR. CONDRON: Yes, your Honor. I think we can
14 probably talk amongst ourselves. This goes back to more or
15 less the same objection we raised before to the extent they're
16 calling for new documents that weren't previously requested,
17 that the request is untimely.

18 THE COURT: Okay. I'm going on to Sol, then. The
19 first one is, there's a 30(b)(6) notice that seeks to determine
20 when Sol had notice and of what, and Sol says it should have
21 been covered in the previous 30(b)(6) deposition. Sol says it
22 has already provided plaintiffs with all documents relevant to
23 the notice issue and has offered a declaration in place of the
24 deposition. As of the time of the letter writing plaintiffs
25 have not responded to the offer. Have plaintiffs now

DANFMTBC

1 responded, Ms. O'Reilly?

2 MS. O'REILLY: No, your Honor. We haven't. We've
3 been looking it over and I went back through the topic in the
4 first notice and the topic that the defendants are claiming is
5 duplicative, the first one says, "Your decision to purchase,
6 buy, sell or otherwise utilize gasoline containing MTBE in the
7 commonwealth of Puerto Rico," and they claim that's the same
8 thing as the second notice, which says, "What date did you
9 first learn MTBE had contaminated any drinking water?"

10 THE COURT: No, that seems different to me. So I
11 would not call that a duplicative question to put on the issues
12 for the 30(b)(6) deposition. But then the next point is that
13 Sol said they've offered to do a declaration in place of a
14 deposition. Isn't it time to get efficient? Not everybody has
15 to show up in person, be placed under oath and testify for
16 hours in a slow endless way. Just take the declaration and see
17 if you're satisfied.

18 MS. O'REILLY: Your Honor, we've only done three
19 witnesses for Sol.

20 THE COURT: I'm looking at this picture collectively.
21 We may be in the hundreds. Three may be too many for Sol. All
22 I'm saying is if there's a person with knowledge that can
23 answer your question which is when did you have notice of MTBE
24 contamination in drinking water in a simple and clean
25 declarative paragraph you may be just as well off. All I'm

DANFMTBC

1 saying if you meet and confer as you've been doing take my
2 comment to heart, see if you can do it by declaration. You can
3 always say it's not adequate, I need to question this person
4 further, but it's always best to take the easier step first and
5 see if you're satisfied. That's what I'm encouraging you to
6 do. This is not a ruling, it's guidance for your meet and
7 confer. In that spirit, do I need to discuss that knowledge
8 issue anymore?

9 MS. O'REILLY: No, your Honor.

10 THE COURT: So the next one says there's an amended
11 notice of deposition to -- oh, we did this -- to all the Shell
12 companies and Sol says it's separate and shouldn't have been
13 included. We've covered that. Okay.

14 The third one says there's a notice of deposition of
15 Sol on issues with regard to document production and
16 videotaping, and Sol says this was all covered in a three-day
17 deposition held August 12th through 14th. So this has all been
18 done. Why do we have to go over issues about document
19 production?

20 MS. O'REILLY: Your Honor, I don't think it's about
21 document production. There's a different issue. There were
22 some issues -- I think this can be handled by meet and confer.
23 We had some issues that were left open on the prior deposition
24 notice. I think that we served something just to preserve our
25 right to take them if we still needed to do so after we

DANFMTBC

1 completed some individuals. So I would suggest that we could
2 leave this open. We're not pressing it at this time until the
3 meet and confer.

4 THE COURT: All right. The next one in my notes is
5 Sunoco. There were two 30(b)(6) notices on October 11 and on
6 September 13th and Sunoco says anyway they're duplicative of
7 the July 9 notice and that Sunoco gave testimony October 16 and
8 17 in response to the July 9 notice. What more are you
9 seeking? People sit for two days and answer your questions. I
10 don't understand why there are second and third rounds of
11 30(b)(6) here.

12 MS. O'REILLY: Your Honor, let me, first of all, the
13 witness that they produced was a radiation person who testified
14 on gasoline supply issues and submitted multiple times that he
15 didn't know anything beyond the documents he'd actually read
16 and wasn't able to answer some questions. The September 13th
17 notice is the one I read you, your Honor, about when did you
18 first learn about MTBE.

19 THE COURT: Okay, all right.

20 MS. O'REILLY: It's a different notice. That is a
21 different subject matter.

22 THE COURT: Right.

23 MS. O'REILLY: On the October 11 notice when I took
24 this witnesses's deposition last week he admitted that he
25 didn't know how they manufactured reformate, which was then

DANFMTBC

1 sent to Peerless and blended into finished gasoline, nor did he
2 know anything and had not read any documents on how the
3 gasoline is blended by Peerless. This is the first time when
4 we took that deposition that we learned how Puerto Rico Sun Oil
5 actually manufactured gasoline in Puerto Rico. So the
6 October 11 notice is very narrow to get into that manufacturing
7 process. That was not part of the prior notice. This witness
8 didn't know the answer.

9 THE COURT: Mr. Krainin, do you understand --

10 MR. KRAININ: Yes, your Honor. I'd be happy to
11 address this. We certainly believe that the issues overlap
12 substantially. There's a great deal of duplication in these
13 notices. The witnesses, just so your Honor understands, the
14 entity, the Sunoco entity that was involved in gasoline sales
15 in Puerto Rico, no longer exists. Puerto Rico Sun Oil Company
16 had ceased operations in 2001. So in essence the Sunoco
17 defendants through a 30(b)(6) notice are limited to what the
18 documents indicate. So we did have a witness who was an
19 environmental engineer involved in many activities, worked in
20 the Puerto Rico facility in Yabucoa for many years, knew a lot
21 about it, but in many respects any witnesses's knowledge we
22 might put up is limited. We've offered a declaration in lieu
23 of preparing yet another 30(b)(6) proponent to talk about the
24 same issues in the same way so that would be my recommendation
25 as to how to resolve this.

DANFMTBC

1 THE COURT: I think there were subjects that
2 Ms. O'Reilly mentioned that the witness really had no knowledge
3 of. She is entitled to get responses on those, particularly
4 I've already commented on knowledge, when did a defendant have
5 knowledge and of what. But there was something else you said
6 Ms. O'Reilly, it's already slipped my mind. There was a topic
7 you said was new.

8 MS. O'REILLY: We asked about the actual manufacturing
9 of the gasoline at Yabucoa and at Peerless. That was not part
10 of this witnesses's knowledges. I tried to at least cover it
11 in the deposition. The witness admitted he did not know.

12 MR. KRAININ: Your Honor, if I may respond. I don't
13 believe that Sunoco could put up any witness to testify as to
14 what happened at Peerless. What Ms. O'Reilly is alluding to
15 and what the witness the last week testified to is that Sunoco
16 had its Yabucoa facility in Puerto Rico manufacture or refine
17 reformate and shipped that reformate product to Peerless, a
18 separate facility in Puerto Rico where Peerless stripped out
19 benzene and added components and transferred the product back
20 to Sunoco for sales to the Peerless facility as completed
21 gasoline. So the facility that completed the manufacture and
22 manufactured finished gasoline on behalf of Sunoco was
23 Peerless.

24 THE COURT: If Sunoco has no knowledge of what
25 happened during the Peerless process, so be it, but it would have

DANFMTBC

1 knowledge of what it accomplished on its own before it went to
2 Peerless and then when it returned back from Peerless what
3 happened. So if this witness isn't able to answer those
4 questions or the notice/knowledge questions then I do think
5 these two topics are appropriate for further deposition.
6 Again, trying a declaration first as an idea but not as
7 attractive here as when I said they should try that with Sol,
8 because here I think they need to talk about a process that
9 went from this Yabucoa facility to Peerless and back. So I
10 think a deposition that's not repetitive.

11 Now, look, Ms. O'Reilly, obviously if you're going to
12 sit and ask the identical questions you already asked you're
13 wasting everybody's time, but why would you waste your own
14 time? I trust you don't intend to do that.

15 Next is the request that document requests 1 through 8
16 is beyond the scope of the CMO of September 30. The last time
17 I raised that with a different defendant they said, you said
18 probably, Ms. O'Reilly that was ripe for meet and confer. You
19 think that's true here, too?

20 MS. O'REILLY: Yes, your Honor.

21 THE COURT: So I won't have anything more to say about
22 document request 1 through 8 whether it's beyond the scope of
23 September 30 but if you don't resolve it you have to really get
24 quickly before the Court or the special master and I think
25 really the special plaster.

DANFMTBC

1 All right that takes me to Tauber Oil. Who is on the
2 phone if anybody for Tauber? Uh-oh. Yesterday somebody said
3 the word Tauber. No counsel? No counsel here for Tauber?
4 That's too bad. I'll just cover it anyway, if it gives any
5 guidance to the plaintiff, but I realize they're not on the
6 phone.

7 The first is they say that the notice demands
8 irrelevant information on sales of MTBE outside Puerto Rico.
9 Obviously, if that's true Ms. O'Reilly, you shouldn't be
10 seeking information on sales outside of Puerto Rico. This is
11 the Puerto Rico case. You understand that?

12 MR. SHORT: Your Honor, Nathan Short. I will cover
13 the topic if you don't mind. We are seeking information about
14 MTBE that was sold by Tauber to Phillips and do have
15 documentation showing the transport of that MTBE to Puerto Rico
16 and it is limited to those types of sales.

17 THE COURT: I suppose if you can make the chain if you
18 can get it from Tauber to Phillips to Puerto Rico then it is a
19 sale that is essentially to Puerto Rico, although with a stop
20 and a transfer along the way. So limited in that way. It's
21 acceptable to me. Of course, Tauber is not on the phone.

22 The second one says that you are demanding irrelevant
23 information relating to components of gasoline other than MTBE.
24 That's all I can do to summarize Tauber's objection. Is that
25 true?

DANFMTBC

1 MR. SHORT: It would be limited to MTBE.

2 THE COURT: And the last one says that the notice
3 demands that this deposition take place in Puerto Rico even
4 though that's not where Tauber is. Where is Tauber located?

5 MR. SHORT: They're in Houston, Texas, your Honor.

6 THE COURT: Can the plaintiff take this deposition in
7 Houston?

8 MR. GILMOUR: Your Honor, John Gilmore. Sorry to
9 interrupt. Yes, we would be happy to take it in Houston. That
10 was stated in the cover letter to Tauber. I think we need to
11 meet and confer further.

12 THE COURT: You don't need to meet and confer further
13 because you said you would do it. Done. That's a ruling. Do
14 it in Houston.

15 Now we're up to TPP. And there's somebody on the
16 phone for them I believe?

17 MS. MALDONADO: Elaine Maldonado.

18 THE COURT: You raised document requests 22 to 25.
19 You say you object to plaintiff's attempt to burden your
20 company with discovery on business, financial accounting and
21 corporate matters concerning corporate Total Group entities and
22 you say that in my July 16, 2013 order I acknowledge that
23 certain other members of the Total Group did not own gasoline
24 stations or UST's in Puerto Rico and plaintiffs have not
25 alleged a piercing the corporate veil theory in the complaint.

DANFMTBC

1 Who wants to address this for the plaintiffs?

2 MR. GILMOUR: Your Honor, this is John Gilmour.

3 THE COURT: Mr. Gilmour, why should you be allowed to
4 seek discovery on business, financial accounting and corporate
5 matters concerning separate Total Group entities? I said
6 yesterday and you were on the call that post judgment discovery
7 is a different matter if and when we ever get there, if we live
8 to see the day, I'll worry about that then. What other reason
9 do you have to be doing this now?

10 MR. GILMOUR: None, your Honor. Based upon your
11 guidance yesterday regarding the possibility of discovery I
12 don't think there's an issue related to that.

13 MS. O'REILLY: Your Honor, may I make one comment?

14 THE COURT: Yes.

15 MS. O'REILLY: One issue that has come up related to
16 this business relationship, and I want to make sure we're not
17 foreclosed, is during deposition personally that I've taken
18 often the witnesses have responded to questions indicating that
19 they had communications or relationships with other related
20 entities. For example, Esso's witness, Mr. Guerrero, said that
21 Manny Perez, a remediation technician provided technical advice
22 to Esso. What I don't want to be foreclosed from going into is
23 going into the subject matter, well, did you get other
24 technical advice from Exxon Mobil, did you have meetings with
25 them. I want to be able to explore that issue if needed.

DANFMTBC

1 Because it's a 30(b)(6) I don't want to be precluded because we
2 don't have a designated issue of a business relationship from
3 someone saying to me you can't ask questions about what Exxon
4 Mobil's relationship is with Esso with this witness because
5 it's not a designated issue.

6 THE COURT: Actually, you can't. You can ask what you
7 described in your last minute and a half of speaking which is
8 technical advice received. In other words, if indeed one
9 company turned to another for techniques of manufacture or
10 proportion of MTBE or whatever, things like that, fine. But
11 you cannot go into corporate relationships of ownership,
12 finance, reporting. In other words, subsidiary, that kind of
13 thing is what you can't do. So do you understand the
14 difference?

15 MS. O'REILLY: Yes, and that's fine with me, as long
16 as there's clarification that we can ask if a witness raises
17 the issue if they got information --

18 THE COURT: No, I just made the ruling. That's the
19 beauty of a transcript. Okay. That finished the lengthy
20 defendant's letter.

21 Now I'm going to try to deal as swiftly as possible
22 with a few of the comments in the last letter which was the
23 October 22nd letter from the plaintiffs.

24 MR. MOLLER: Jeffrey Moller from Lyondell Chemical.
25 Yesterday we broke sort of right in the middle of discussion of

DANFMTBC

1 the 30(b)(6) notice that Lyondell had received.

2 THE COURT: Let me check my notes and see if I agree
3 with that. I left the page open where I started. One second.
4 Yes, it's true I was on the line just before Petrobras. Go
5 ahead.

6 MR. MOLLER: I will say, however, that your guidelines
7 given in response to some of these other issues today such as
8 to Shell on the disguised document production request and the
9 favor of declaration and as to Tauber making out the chain,
10 that has been very, very helpful. There's only one remaining
11 issue I think that we would need some guidance on and that's
12 with respect to the issues in the notice pertaining to warnings
13 issued by Lyondell to a number of the Puerto Rico customers.

14 THE COURT: What's the question?

15 MR. MOLLER: The question is whether or not, why that
16 isn't duplicative of the deposition already taken in the MDL of
17 Lyondell on warnings issues.

18 THE COURT: I don't know that the plaintiffs lawyers
19 have reviewed the designated pages. Which plaintiffs lawyer is
20 in charge of Lyondell discovery here?

21 MS. O'REILLY: Your Honor, Mr. Miller, but I can
22 respond for you.

23 THE COURT: What he's saying is have you read the
24 pages he would point you to on that very subject, warnings by
25 Lyondell in this matter?

DANFMTBC

1 MS. O'REILLY: We haven't, but I can tell you this:
2 What the warnings we're looking for are to Puerto Rican-based
3 entities.

4 THE COURT: Maybe there are none. Maybe Lyondell has
5 a standard bunch of warnings that they send out as a
6 manufacturer of MTBE to anybody. I don't know the answer but
7 if that's what they do, and if Mr. Moller, he knows better than
8 I, do these warnings differ by customer or is there a standard
9 warning, if there is any warning, a standard one that Lyondell
10 uses when it sells neat MTBE?

11 MR. MOLLER: I think I can offer a declaration to the
12 extent that in the prior deposition and all the other documents
13 that have been provided in the course of MTBE litigation are
14 not sufficient. We could get a declaration together to talk
15 about whether or not particular customers in Puerto Rico
16 received, you know, individualized warnings or information
17 packets.

18 THE COURT: So you don't know the answer is what
19 you're saying?

20 MR. MOLLER: Off the top of my head I don't know that
21 precisely.

22 THE COURT: Okay, so what I suggest you do in this and
23 that I'd like to get to that last letter and get off this call
24 is do two things. One, write to the adversary and say I'm
25 referring to the deposition of, you know, whatever, the month,

DANFMTBC

1 year, month, date, year, taken in this MDL where warnings were
2 discussed. If you don't have a transcript I'll provide it to
3 you, but that's the deposition I'm referring to that covers the
4 topic of warnings. In addition, produce a declaration as you
5 just offered from somebody with knowledge saying whether
6 there's anything particularized with respect to any customer in
7 Puerto Rico. After the plaintiffs receive both of those
8 communications from you, that is, pointing them to the
9 deposition testimony that you're relying on and the
10 declaration, then if they still wish to pursue further
11 discovery you can object and I can hash out why they should be
12 permitted or not permitted. But I don't want to do that in
13 advance, give the two things that I said and then we'll see
14 where we are. All right?

15 MR. MOLLER: Understood, your Honor, thank you.

16 THE COURT: Then I want to get to this last letter and
17 see if there's anything new in it, and that's the October 22nd
18 letter from the plaintiffs.

19 MS. O'REILLY: Your Honor, this is Ms. O'Reilly. I
20 think you have addressed everything that we raised in our
21 October 22nd letter.

22 THE COURT: Oh, do you? Because I had the letter in
23 front of me, I was going to go through the highlights of it.

24 MS. O'REILLY: I think we're good.

25 THE COURT: Let me just turn the pages and be sure.

DANFMTBC

1 MS. O'REILLY: Okay.

2 THE COURT: Defendant's objection to percipient
3 witnesses -- deposition of Chevron, Shell -- okay. All right,
4 if you're satisfied, I just looked through it, that's okay with
5 me.

6 Then what's left that we have to talk about today?
7 Ms. O'Reilly first. Why don't you finish?

8 MS. O'REILLY: One is it appears we inadvertently
9 omitted a name on our October 17 letter, it's one witness his
10 name is Maximo Alvarez. He was a gentleman who owned Sunshine
11 gasoline. He came into Puerto Rico and bought up the gasoline
12 at the Puerto Rico stations. He had a branding agreement with
13 Citgo and he apparently had Citgo branded stations in Florida.
14 We served a subpoena on him as part of our discovery. We just
15 omitted his name on the letter and would like to add him to the
16 letter. It's important to under --

17 THE COURT: That was a letter where you identified the
18 37 real ones sort of?

19 MS. O'REILLY: Yes.

20 THE COURT: Okay, so it will be 38. Done. What's the
21 next?

22 MS. O'REILLY: The next question is whether the Court
23 would be willing to provide us with a deadline by which the
24 declaration the defendants have offered to us --

25 THE COURT: Sure, in the last two days of phone calls?

DANFMTBC

1 MS. O'REILLY: Correct.

2 THE COURT: How about a week from this Friday which I
3 think is November 8.

4 MS. O'REILLY: That would be good, your Honor, but I'm
5 a little concerned that if we can't reach agreement for the
6 declaration that leaves very little time. The defendants have
7 been saying for weeks they wanted declarations instead of
8 depositions. I would assume they've been working on them.

9 THE COURT: Let's find out. Can the defendants
10 provide all the declarations discussed in the letter by
11 November 4, Monday, actually it's a week from Monday, I skipped
12 a week. November 4 is a week from Monday. I think that's
13 fair. Today is only Wednesday, so that's two weeks minus two
14 days. Okay, November 4th all declarations offered in the last
15 day and a half and I would ask the defendants through
16 Mr. Riccardulli, who is sort of captain of the team, that if
17 people can get it in earlier please do. Please don't play
18 games and hold it back. If you got the declaration already
19 signed send it in. Don't hold it over. But no later than
20 November 4. Anything else, Ms. O'Reilly?

21 MS. O'REILLY: No.

22 THE COURT: Somebody else tried to speak?

23 MR. CORRELL: Charles Correll for Chevron. At the
24 last status conference you set a date of today for the
25 plaintiffs to provide dates for the depositions and then for

DANFMTBC

1 defendants to provide dates for depositions that were going to
2 go forward after this conference, but the conference took two
3 days. Do we need to set a new deadline by which all dates are
4 established?

5 THE COURT: Sure. What did I say before? Oh, today?

6 MR. CORRELL: Today was the day.

7 THE COURT: Okay, by Friday the 25th, the 25th is the
8 new deadline. Anything further?

9 MR. HARRIS: Your Honor, Jim Harris. Just really
10 quickly on the declarations from defendants. I've been in
11 discussions with Mr. Gilmour, Mr. Petit and they propose
12 sending me a declaration. Are the plaintiffs under any
13 obligation, is that something we need to talk about on the
14 31st? I just don't want to miss a deadline here.

15 THE COURT: Everyone who promised a declaration to
16 anybody else must do it no later than November 4 and earlier if
17 possible. Anything else? Okay. All right. So this was
18 another 41 minutes. Hopefully with all the guidance of the
19 last two days there will be some issues you can resolve with
20 yourself in quick meet and confers. If there are real issues
21 that still need rulings please go to the special master. I'm
22 going to be out of town much of next week and then the week
23 after on trial so I won't have this kind of time in the
24 daytime. Okay? Okay. Thank you, bye-bye.

25 (Adjourned)